

14-0144

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

SHAUN COLLINS, ELIZABETH COLLINS,  
DEBORAH DUNCAN, WILLIS DUNCAN,  
PAUL HORN, DEWEY MARCUM,  
MISTY MARCUM, STEVEN MARCUM,  
POLLY WILLIAMS, GEORGE BALL,  
KATHY BALL, BRUCE BLANKENSHIP,  
TEDDY BLANKENSHIP, ERNEST MEADE,  
MARY LOU MEADE, by and through her guardian  
and next friend ERNEST MEADE,  
JAMES MULLINS, JOYCE MULLINS,  
SHARON MULLINS, VERNON MULLINS,  
BRENDA PREECE, DENNIS MITCHELL SMITH,  
CHARLES EDWARD SPEER, and LORA SPEER,

Plaintiffs,

v.

CIVIL ACTION NO.: 10-C-251 515

TUG VALLEY PHARMACY, LLC,  
a West Virginia corporation,  
MOUNTAIN MEDICAL CENTER, LLC,  
a West Virginia corporation, and  
DOCTORS KATHERINE HOOVER  
J. VICTORINO TELERON, WILLIAM RYCKMAN,  
and DIANE E. SHAFER,

Defendants;

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

PATRICIA SALMONS, Administratrix  
of the Estate of LYNETTE SALMONS  
FRANCIS, deceased,

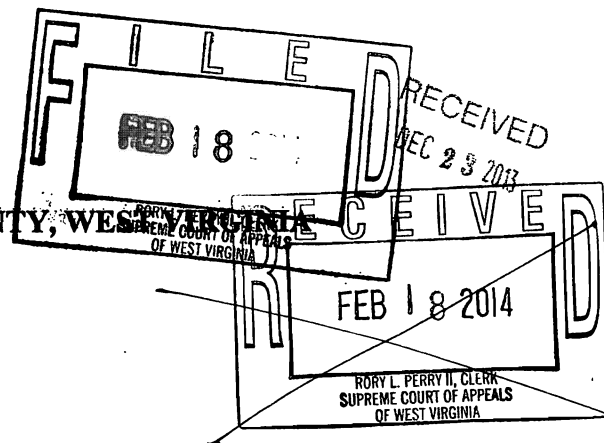
Plaintiff,

CIVIL ACTION NO.: 11-C-332

v.

DIANE SHAFER, M.D.,  
TUG VALLEY PHARMACY, LLC  
and SAMUEL R. BALLENGEE

Defendants.



ADMITTED TO RECORD  
2013 DEC 19 P 4:37  
MINGO COUNTY CIRCUIT CLERK

**IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA**

**SULA COLLINS and  
NICKEY COLLINS,  
NICKEY COLLINS, as next  
friend of WHITTNEY COLLINS,  
an infant child, and  
CHRISTOPHER COLLINS,**

**Plaintiffs,**

**v.**

**CIVIL ACTION NO.: 12-C-38**

**TUG VALLEY PHARMACY, LLC,  
a West Virginia corporation,  
MOUNTAIN MEDICAL CENTER, LLC,  
a West Virginia corporation,  
DOCTORS KATHERINE HOOVER,  
and J. VICTORINO TELERON, and  
SAMUEL RANDOLPH BALLENGEE,**

**Defendants.**

**IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA**

**RUSSELL RATLIFF,  
BRUCE BLANKENSHIP,  
TEDDY BLANKENSHIP, GEORGE BALL,  
KATHY BALL, DEBORAH DUNCAN,  
WILLIS DUNCAN, PAUL HORN,  
MARCELLA JUSTICE, DEWEY MARCUM,  
MISTY MARCUM, STEVEN MARCUM,  
POLLY WILLIAMS, ERNEST MEADE,  
MARY LOU MEADE, by and through her  
guardian and next friend ERNEST MEADE,  
JOEY PORTER, BRENDA PREECE,  
LORA SPEERS, and CHARLES EDWARD SPEERS**

**Plaintiffs,**

**v.**

**CIVIL ACTION NO.: 10-C-252**

**505**

**STROSNIDER DRUG STORE, INC., d/b/a  
SAV-RITE PHARMACY, a West Virginia Corporation**

**Defendant.**

**IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA**

**WILBERT HATCHER,**

**Plaintiff,**

**v.**

**CIVIL ACTION NO.: 10-C-319**

**B & K PHARMACIES, INC. d/b/a FAMILY  
PHARMACY, a Kentucky corporation  
transacting business in West Virginia,  
MOUNTAIN MEDICAL CARE CENTER,  
LLC., a West Virginia corporation, and  
DOCTORS KATHERINE HOOVER, J.  
VICTORINO TELERON, and WILLIAM  
RYCKMAN,**

**Defendants.**

**IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA**

**MISTY MARCUM and  
DEWEY MARCUM,**

**Plaintiffs,**

**v.**

**CIVIL ACTION NO.: 12-C-39**

**B & K PHARMACIES, INC.  
d/b/a/ FAMILY PHARMACY, a Kentucky  
corporation transacting business in  
West Virginia, MOUNTAIN  
MEDICAL CARE CENTER, LLC,  
a West Virginia corporation, and  
DOCTORS KATHERINE HOOVER,  
and J. VICTORINO TELERON,**

**Defendants.**

**IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA**

**LISA L. HENSLEY,**

**Plaintiff,**

**v.**

**CIVIL ACTION NO.:12-C-35**

**B & K PHARMACIES, INC.  
d/b/a/ FAMILY PHARMACY, a Kentucky  
corporation transacting business in  
West Virginia, MOUNTAIN  
MEDICAL CARE CENTER, LLC,  
a West Virginia corporation, and  
DOCTORS KATHERINE HOOVER,  
and J. VICTORINO TELERON,**

**Defendants.**

**IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA**

**RUSSELL RATLIFF and  
CHARLES EDWARD SPEER, et al**

**Plaintiffs,**

**v.**

**CIVIL ACTION NO.:11-C-370**

**STROSNIDER DRUG STORE, INC., d/b/a  
SAV-RITE PHARMACY, and  
STROSNIDER DRUG STORE, INC., d/b/a  
SAV-RITE PHARMACY No. 2 and  
JAMES P. WOOLEY and NATIONWIDE PROPERTY  
And CASUALTY INSURANCE COMPANY,  
a corporation, d/b/a NATIONWIDE P and C INS. CO.**

**Defendants.**

**Proposed Certified Question Order**

On a former day, came the Defendants, Tug Valley Pharmacy, LLC, B&K Pharmacies, Inc. d/b/a Family Pharmacy, and Strosnider Drug Store, Inc., d/b/a Sav-Rite Pharmacy

("Defendant Pharmacies") in various civil actions<sup>1</sup> and moved for summary judgment on all claims brought by the various Plaintiffs alleging the Defendant Pharmacies negligently and/or recklessly provided the prescriptions for controlled substances to the Plaintiffs. Defendant Diane Shafer joined in the motions. The Defendants argued that the Plaintiffs' intentional, illegal, and immoral conduct in acquiring, using, and abusing prescription narcotic pain medication and other controlled substances bar any claims they have against the Defendants. The Defendants also relied upon the doctrine of *in pari delicto* as a bar to Plaintiffs' claims. On the contrary, the

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<sup>1</sup> *Shaun Collins, Elizabeth Collins, Deborah Duncan, Willis Duncan, Paul Horn, Dewey Marcum, Misty Marcum, Steven Marcum, Polly Williams, George Ball, Kathy Ball, Bruce Blankenship, Teddy Blankenship, Ernest Meade, Mary Lou Meade, by and through her guardian and next friend Ernest Meade, James Mullins, Joyce Mullins, Sharon Mullins, Vernon Mullins, Brenda Preece, Dennis Mitchell Smith, Charles Edward Speer, and Lora Speer v. Tug Valley Pharmacy, LLC, a West Virginia Corporation, Mountain Medical Center, LLC, a West Virginia corporation, and Doctors Katherine Hoover, J. Victorino Teleron, William Ryckman, and Diane E. Shafer, Civil Action No.: 10-C-251*

*William Hatcher v. B & K Pharmacies, Inc., d/b/a/ Family Pharmacy, a Kentucky corporation transacting business in West Virginia, Mountain Medical Care Center, LLC, a West Virginia corporation, and Doctors Katherine Hoover, J. Victorino Teleron, and William Ryckman, Civil Action No.: 10-C-319*

*Russell Ratliff, Bruce Blankenship, Teddy Blankenship, George Ball, Kathy Ball, Deborah Duncan, Willis Duncan, Paul Horn, Marcella Justice, Dewey Marcum, Misty Marcum, Steven Marcum, Polly Williams, Ernest Meade, Mary Lou Meade, by and through her guardian and next friend Ernest Meade, Joey Porter, Brenda Preece, Lora Speers, and Charles Edward Speers v. Strosnider Drug Store, Inc., d/b/a Sav-Rite Pharmacy, a West Virginia Corporation, Civil Action No.: 10-C-252*

*Patricia Salmons, Administratrix of the estate of Lynette Salmons Francis, deceased v. Diane Shafer, M.D., Tug Valley Pharmacy, LLC and Samuel R. Ballengee, Civil Action No.: 11-C-332*

*Charles Edward Speer v. Justice medical Complex, LLC, a West Virginia corporation, Strosnider Drug Store, Inc., d/b/a Sav-Rite Pharmacy, Strosnider Drug Store, Inc., d/b/a Sav-Rite Pharmacy #2, James P. Wooley, Individually, and Dr. Augusto T. Abad, Civil Action No.: 11-C-46*

*Sula Collins and Nickey Collins, Nickey Collins, as next friend of Whitney Collins, an infant child, and Christopher Collins v. Tug Valley Pharmacy, LLC, a West Virginia corporation, Mountain Medical Center, LLC, a West Virginia corporation, and Doctors Katherine Hoover, and J. Victorino Teleron, Civil Action No.: 12-C-38*

*Donna Sturgill v. Tug Valley Pharmacy, LLC, a West Virginia corporation, Mountain Medical Center, LLC, a West Virginia corporation, and Doctors Katherine Hoover, and J. Victorino Teleron, Civil Action No.: 12-C-60*

*Misty Marcum and Dewey Marcum v. B & K Pharmacies, Inc. d/b/a Family Pharmacy, a Kentucky corporation transacting business in West Virginia, Mountain Medical Care Center, LLC, a West Virginia corporation, and Doctors Katherine Hoover, and J. Victorino Teleron, Civil Action No.: 12-C-39*

*Lisa L. Hensley v. B & K Pharmacies, Inc. d/b/a Family Pharmacy, a Kentucky corporation transacting business in West Virginia, Mountain Medical Care Center, LLC, a West Virginia corporation, and Doctors Katherine Hoover, and J. Victorino Teleron, Civil Action No.: 12-C-35*

Plaintiffs argue that their claims are not barred as a matter of law and should be governed by the doctrine of comparative fault, also taking into account the actions of the Defendants. The Plaintiffs also maintain the doctrine of *in pari delicto* is inapplicable. The parties jointly moved this Court, pursuant to W. Va. Code §58-5-2, to certify a question of law to the Supreme Court of Appeals to resolve this issue.

Upon consideration, the Court hereby grants the parties' joint motion and certifies the following two questions of law to the Supreme Court of Appeals:

1. May a person maintain an action if, in order to establish the cause of action, the person must rely, in whole or in part, on an illegal or immoral act or transaction to which the person is a party?

The Court answers this question in the affirmative X / negative \_\_\_\_.

2. May the doctrine of *in pari delicto* be employed as a bar to tort claims under West Virginia law?

The Court answers this question in the affirmative \_\_\_\_ / negative X.

It is ORDERED that all further proceedings in the present actions be, and hereby are, stayed until such time as the Certified Questions have been decided and the decision thereof certified back to this Court. It is further ORDERED that the parties prepare a joint appendix of the record sufficient to permit review of the certified questions.

The parties objections and exceptions to the present order are hereby preserved.

The Clerk of this Court is directed to transmit certified copies of this ORDER to all counsel of record upon entry:

Entered this 19 day of December, 2013.

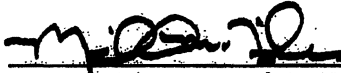
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Grant Pierce

(C2724947) CIRCUIT CLERK, MINGO COUNTY, W.VA.

The Honorable John L. Cummings

**Prepared by:**



Michael M. Fisher (WVSB #4353)

Elizabeth S. Cimino (WVSB #6997)

Ryan E. Voelker (WVSB #11159)

JACKSON KELLY PLLC

Post Office Box 553

Charleston, West Virginia 25322

(304) 340-1000

*Counsel for Tug Valley Pharmacy, LLC, B&K Pharmacies, Inc. d/b/a Family Pharmacy, and Samuel R. Ballengee*

**Approved by:**



James M. Cagle, Esquire

1200 Boulevard Tower

1018 Kanawha Blvd, East

Charleston, West Virginia 25301

*Counsel for Plaintiffs*



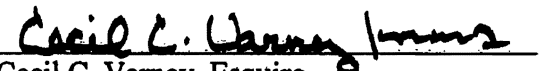
David Nelson, Esquire

Hendrickson & Long, PLLC

P. O. Box 11070

Charleston, WV 25339

*Counsel for Strosnider Drug Store, Inc. d/b/a Sav-Rite Pharmacy*



Cecil C. Varney, Esquire

Post Office Box 468

Williamson, West Virginia 25661

*Counsel for Diane Shaffer, M.D.*



Tanya Handley, Esquire

MacCorkle Lavender & Sweeney

300 Summers Street, Suite 800

Charleston, WV 25301

*Counsel for Nationwide Insurance Company*